

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Gordon P. KURTENBACH

Serial No. 10/611,960

Group Art Unit: 2179

Confirmation No. 3561

Filed: July 3, 2003

Examiner: Mylinh T. Tran

For: METHOD AND APPARATUS FOR PRODUCING, CONTROLLING AND DISPLAYING  
MENUS

**PETITION REQUESTING WITHDRAWAL OF FINALITY**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Attention: **BOX AF**

Sir:

Page 2 of the final Office Action rejects claims 1-3, 7 and and-23 under 35 U.S.C. § 103 over Smith. However, the Action maintains its rejection despite clear statements by the inventor in a Declaration executed on June 4, 2007 and filed on June 11, 2007. 37 CFR 1.113 states:

37 CFR 1.113 Final rejection or action

...

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.

Furthermore, the MPEP states:

706.07 Final Rejection

Before final rejection is in order a clear issue should be developed between the examiner and applicant.

706.07(a) Final Rejection, When Proper on Second Action

...

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on

information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

It is unclear what grounds, if any, are the basis for dismissing the statements made by the inventor in a Declaration executed on June 4, 2007 and filed on June 11, 2007. In light of the Declaration filed on June 11, 2007 and the arguments filed on June 11, 2007 and February 25, 2008, the Office Action presented no rationale for rejecting claims -3, 7 and and-23 under 35 U.S.C. § 103 over Smith.

Therefore, it is submitted that the finality of the rejection is improper and should be withdrawn which is requested.

If any further fees, other than and except for the issue fee, are necessary with respect to this paper, the U.S.P.T.O. is requested to obtain the same from deposit account number 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: February 25, 2008

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